

立法會  
*Legislative Council*

LC Paper No. CB(2)1323/19-20

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**House Committee of the Legislative Council**

**Minutes of the Special House Committee meeting  
held in Conference Room 1 of the Legislative Council Complex  
at 10:00 am on Friday, 8 May 2020**

**Members present :**

Hon Starry LEE Wai-king, SBS, JP (Incumbent Chairman)  
Hon Dennis KWOK Wing-hang (Deputy Chairman for the 2018-2019 session)  
Hon James TO Kun-sun  
Hon LEUNG Yiu-chung  
Hon Abraham SHEK Lai-him, GBS, JP  
Hon Tommy CHEUNG Yu-yan, GBS, JP  
Prof Hon Joseph LEE Kok-long, SBS, JP  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon WONG Ting-kwong, GBS, JP  
Hon CHAN Hak-kan, BBS, JP  
Hon CHAN Kin-por, GBS, JP  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon WONG Kwok-kin, SBS, JP  
Hon Mrs Regina IP LAU Suk-yee, GBS, JP  
Hon Claudia MO  
Hon Michael TIEN Puk-sun, BBS, JP  
Hon Steven HO Chun-yin, BBS  
Hon Frankie YICK Chi-ming, SBS, JP  
Hon WU Chi-wai, MH  
Hon YIU Si-wing, BBS  
Hon MA Fung-kwok, SBS, JP  
Hon Charles Peter MOK, JP  
Hon CHAN Chi-chuen  
Hon CHAN Han-pan, BBS, JP  
Hon LEUNG Che-cheung, SBS, MH, JP  
Hon Kenneth LEUNG  
Hon Alice MAK Mei-kuen, BBS, JP  
Dr Hon KWOK Ka-ki  
Hon KWOK Wai-keung, JP

Hon Christopher CHEUNG Wah-fung, SBS, JP  
Dr Hon Fernando CHEUNG Chiu-hung  
Hon IP Kin-yuen  
Hon Elizabeth QUAT, BBS, JP  
Hon Martin LIAO Cheung-kong, GBS, JP  
Hon POON Siu-ping, BBS, MH  
Dr Hon CHIANG Lai-wan, SBS, JP  
Ir Dr Hon LO Wai-kwok, SBS, MH, JP  
Hon Alvin YEUNG  
Hon Andrew WAN Siu-kin  
Hon CHU Hoi-dick  
Hon Jimmy NG Wing-ka, BBS, JP  
Dr Hon Junius HO Kwan-yiu, JP  
Hon HO Kai-ming  
Hon LAM Cheuk-ting  
Hon Holden CHOW Ho-ding  
Hon SHIU Ka-fai, JP  
Hon SHIU Ka-chun  
Hon Wilson OR Chong-shing, MH  
Hon YUNG Hoi-yan, JP  
Dr Hon Pierre CHAN  
Hon CHAN Chun-ying, JP  
Hon Tanya CHAN  
Hon CHEUNG Kwok-kwan, JP  
Hon HUI Chi-fung  
Hon LUK Chung-hung, JP  
Hon LAU Kwok-fan, MH  
Hon Kenneth LAU Ip-keung, BBS, MH, JP  
Dr Hon CHENG Chung-tai  
Hon KWONG Chun-yu  
Hon Jeremy TAM Man-ho  
Hon Vincent CHENG Wing-shun, MH, JP  
Hon Tony TSE Wai-chuen, BBS  
Hon CHAN Hoi-yan

**Members absent :**

Hon Paul TSE Wai-chun, JP  
Dr Hon Helena WONG Pik-wan  
Hon CHUNG Kwok-pan

**Clerk in attendance :**

Miss Flora TAI Clerk to the House Committee

**Staff in attendance :**

Ms Alice LEUNG	Chief Council Secretary (2)6
Miss Connie AU	Senior Council Secretary (2)6
Mr Richard WONG	Senior Council Secretary (2)8
Miss Michelle TANG	Council Secretary (2)6
Ms Anna CHEUNG	Senior Legislative Assistant (2)3
Mr Arthur KAN	Legislative Assistant (2)7

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**I. Election of the Chairman and Deputy Chairman of the House Committee for the 2019-2020 session**

Mr Dennis KWOK, Deputy Chairman for the 2018-2019 session and Member presiding at the election of the Chairman of the House Committee ("HC") for the 2019-2020 session ("the said election"), invited Members to continue the joint discussion concerning the motions originally proposed by Mr Kenneth LEUNG, Ms Claudia MO and Mr Charles MOK at the special HC meetings on 15 and 22 November 2019, and 10 January 2020 respectively.

Point of order raised at the meeting

2. Ms Tanya CHAN raised a point of order. She said that on issues relating to the said election, the President had issued to all HC Members the joint advice of Mr Benjamin YU SC and Mr Jenkin SUEN SC ("the Outside Counsel's advice issued by the President"), which had been sought by the Secretariat under his direction, on 4 May 2020. The 22 Members of the pro-democracy camp had written to the incumbent HC Chairman on 7 May 2020 attaching the joint advice prepared by Mr Philip DYKES SC, Mr Johannes CHAN SC (Hon), Mr Jeffrey TAM, Mr Jason LEE and Mr Andrew LAU ("the Outside Counsel's advice submitted by 22 Members") in relation to issues arising from the said election for circulation to all HC Members. Ms CHAN considered that these two pieces of legal advice were directly related to the said election, and the relevant legal issues should therefore be dealt with at this meeting. She also queried whether it was legal for the incumbent HC Chairman to call the special HC meeting in the afternoon on the same day of this meeting

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("the afternoon meeting") to deal with other HC business before the completion of the said election. Ms CHAN requested Mr Dennis KWOK as the Presiding Member to rule on whether those legal issues were directly related to the said election.

3. Mr Dennis KWOK concurred that it was necessary to deal with the issues raised by Ms Tanya CHAN at this meeting. He then invited those Members who had requested to speak on those issues to do so.

4. Dr KWOK Ka-ki, Ms Claudia MO and Mr Alvin YEUNG considered it appropriate to discuss at this meeting the aforesaid two pieces of legal advice as well as the advice given by the Legal Service Division ("LSD") set out in LC Paper No. LS11/19-20 dated 25 October 2019 ("LSD's advice issued in October 2019"). Dr KWOK said that according to the Outside Counsel's advice submitted by 22 Members, the only power of the incumbent HC Chairman in the new session was to conduct the said election and the incumbent HC Chairman should not call meetings to transact or deal with any business other than the said election. Dr KWOK considered that the afternoon meeting called by the incumbent HC Chairman might breach the relevant provisions in the Rules of Procedure ("RoP"), and the decision(s) made at the afternoon meeting might be subject to legal challenge. Mr YEUNG considered that as Ms Starry LEE was one of the candidates for the HC chairmanship, there was an obvious conflict of role/interest for Ms LEE to call the afternoon meeting in the capacity of the incumbent HC Chairman to deal with the so-called urgent/essential HC business which, in his view, lacked clear definition. Ms MO and Mr YEUNG also expressed dissatisfaction that the President had used public money to seek outside counsel's advice without prior consultation with the 22 Members of the pro-democracy camp and had not disclosed the full legal advice to all Members and the public. Ms MO added that she considered that Mr Dennis KWOK should make a ruling on the issues raised by Ms Tanya CHAN.

5. Mr CHAN Hak-kan and Mr Martin LIAO took the view that the role and powers of the presiding Member should be confined to the conduct of the said election, and therefore, Mr Dennis KWOK was acting beyond his powers to allow Members to discuss motions proposed by Members or the legal issues raised by Ms Tanya CHAN. They urged Mr Dennis KWOK to immediately proceed with the conduct of the said election. Mr CHAN and Mr LIAO considered that should Members wish to discuss those legal issues, they could do so at the afternoon meeting as there was a relevant agenda item and the Legal Adviser would

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attend that meeting. Mr CHAN said that he had learnt from the President's media briefing on 4 May 2020 that the Outside Counsel's advice issued by the President was no different from LSD's advice issued in October 2019. Mr LIAO said that the issues raised by Ms Tanya CHAN concerned the powers of the incumbent HC Chairman to call meetings in accordance with RoP and were not related to the said election. Therefore, Mr KWOK did not have the powers to make any ruling on the issues raised by Ms Tanya CHAN.

6. Mr IP Kin-yuen, Dr CHENG Chung-tai and Mr LEUNG Yiu-chung queried whether it was proper for the incumbent HC Chairman to unilaterally adopt the Outside Counsel's advice issued by the President and call the afternoon meeting. Mr IP and Mr LEUNG considered that such an arrangement was a violation of due process and a deviation from the past practice. Mr IP also considered that the way the incumbent HC Chairman had called the afternoon meeting was tantamount to seizing the power from the presiding Member. Dr CHENG considered it unreasonable for the President not to refer the Outside Counsel's advice issued by him to the Committee on Rules of Procedure for consideration as the advice concerned RoP. Dr CHENG added that there was an obvious conflict of role/interest for Ms Starry LEE, who was a candidate for the HC chairmanship, to exercise her powers as the incumbent HC Chairman and call the afternoon meeting to deal with other HC business.

7. Dr Priscilla LEUNG, Dr Junius HO and Mr Jeffrey LAM expressed dissatisfaction about the prolonged delay of the said election. Dr LEUNG reiterated that pursuant to RoP 75(2), the incumbent HC Chairman should continue to hold office until the HC Chairman for the new session was elected, and therefore, Ms Starry LEE had the powers to call meetings to deal with normal business of HC. Dr LEUNG added that in her view, it was preferable to allocate not more than 15 minutes to the said election at each meeting. Dr HO considered that the Outside Counsel's advice issued by the President had provided sufficient justification for Ms Starry LEE, having regard to public interest, to exercise her powers as the incumbent HC Chairman to call meetings to deal with essential/urgent HC business. He did not see any conflict of role/interest for Ms LEE to call the afternoon meeting. Dr HO and Mr LAM also considered that Mr Dennis KWOK was abusing his power as the presiding Member.

8. Ms Elizabeth QUAT, Mr LEUNG Che-cheung and Mr LUK Chung-hung considered that the way Mr Dennis KWOK had presided at the said election was an abuse of power. Ms QUAT, Mr LUK and Dr Junius HO queried whether the said election had been prolonged by Mr Dennis KWOK and Members of the opposition camp with the intention to obstruct the passage of the National Anthem Bill. Ms QUAT urged Mr Dennis KWOK to immediately proceed with the conduct of the said election. Mr LUK commented that it was unacceptable for any Member to suggest that Ms Starry LEE should withdraw from the said election which, in his view, amounted to interfering in the election. Mr LEUNG said that it should be up to Ms Starry LEE to give regard to the relevant legal advice and exercise her powers as the incumbent HC Chairman. Mr LEUNG considered that some Members had made use of raising points of order at this meeting to create troubles for the afternoon meeting.

9. Mr CHU Hoi-dick, Mr Jeremy TAM and Mr CHAN Chi-chuen expressed objection to the way the incumbent HC Chairman had called the afternoon meeting to deal with other HC business pending the completion of the said election. In the view of these three Members, it was unacceptable for Ms Starry LEE, being a candidate for the HC chairmanship, to continue to exercise her powers as the incumbent HC Chairman pending the completion of the said election. Mr CHU considered that Mr Dennis KWOK should deal with the relevant legal issues in his capacity as the presiding Member at this meeting. Mr CHU added that the said election, if it could not be completed at this meeting, should continue to be conducted at the afternoon meeting. Mr TAM said that he wondered whether Members of the pro-establishment camp were "being activated" ("被激活" in Chinese) by the remarks made by the Hong Kong and Macao Affairs Office of the State Council and the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region in April 2020 regarding the operation of HC. Mr CHAN said that if the two pieces of legal advice were considered directly related to the said election, it would be reasonable for Mr Dennis KWOK to deal with the relevant legal issues at this meeting. Even if the two pieces of legal advice were not related to the said election, the legal issues should only be dealt with by HC after the completion of the election of the Chairman and Deputy Chairman of HC for the 2019-2020 session. Mr CHAN added that to his knowledge, the Outside Counsel's advice issued by the President was not the full advice provided to the President, and he questioned whether Ms Starry LEE had been given access to the undisclosed part.

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*(At 10:28 am, Mr Dennis KWOK announced that the meeting be extended for not more than 15 minutes to allow more time for discussion.)*

10. Referring to the Outside Counsel's advice submitted by 22 Members, Mr Kenneth LEUNG, Dr Fernando CHEUNG and Mr Charles MOK took the view that Ms Starry LEE could not resolve the conflict of role/interest between being a candidate for the HC chairmanship and exercising her powers as the incumbent HC Chairman, and therefore, it was unacceptable for Ms LEE to call the afternoon meeting to deal with other HC business pending the completion of the said election. Mr LEUNG said that he was gravely concerned why the Secretariat accepted the Outside Counsel's advice issued by the President now. In Mr LEUNG's view, there had not been any material change in the circumstances over the past several months to justify that HC should stop following LSD's advice issued in October 2019, which stated that other HC business should only be dealt with after the completion of the election of the Chairman and Deputy Chairman of HC for the 2019-2020 session. Mr LEUNG further said that as pointed out in the Outside Counsel's advice submitted by 22 Members, an incumbent HC Chairman might seek to abuse his/her powers by prolonging or delaying the process of the election of the new HC Chairman so that he/she would remain in office as the HC Chairman. Dr CHEUNG said that based on his interpretation of RoP 75 and rule 20 of the House Rules ("HR"), the only power of the incumbent HC Chairman in the new session was to conduct the election of the new HC Chairman. Dr CHEUNG added that if Ms Starry LEE was to preside at the afternoon meeting, she should be regarded as having withdrawn her candidature for the said election.

11. Ms Starry LEE said that in accordance with the relevant provisions of RoP and HR, she as the incumbent HC Chairman remained in office until the HC Chairman for the new session was elected, and no restriction was imposed on her statutory powers as the incumbent HC Chairman during the period. She further said that the afternoon meeting was called to consider, discuss and resolve HC's urgent/essential business pending completion of the election of the HC Chairman for the 2019-2020 session, and Members could give their views on different legal advice relating to the matter. Ms LEE stated clearly that it was not a fact that she had conflict of role/interest in exercising her powers as the incumbent HC Chairman because after she was nominated for the HC chairmanship, the role of the presiding Member had been passed to Mr Dennis KWOK. She added that if the said election was completed at this meeting, the newly elected HC Chairman would preside at the

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afternoon meeting and it would be up to the newly elected HC Chairman to consider and decide whether and how to deal with the items on the agenda of the afternoon meeting.

12. In conclusion, Mr Dennis KWOK said that he remained convinced of LSD's advice issued in October 2019 which stated that the election of the Chairman and Deputy Chairman of HC should be the first item of business of HC for the 2019-2020 session, and the election would need to be completed before HC could proceed to transact other business. Besides, his interpretation of the paper issued by LSD on the relevant issues dated 27 April 2020 (LC Paper No. LS 67/19-20) was that LSD had not changed the above advice. Mr KWOK further said that the powers of the incumbent HC Chairman vis-à-vis a new session should primarily relate to the conduct of the election of Chairman and Deputy Chairman of HC for the new session. He was concerned that if the incumbent HC Chairman could exercise the powers of the chairman before the new chairman was elected, that would upset the practice in relation to the mode of operation of the Finance Committee, Panels and other committees of the Council. Mr KWOK then made clear that having considered the relevant legal advice and LSD's advice issued in October 2019 as well as on 27 April 2020, it was his ruling that the election of the Chairman and Deputy Chairman of HC should be the first item of business before HC could transact other business, and therefore, the afternoon meeting should continue to deal with the said election.

13. The meeting ended at 10:44 am.